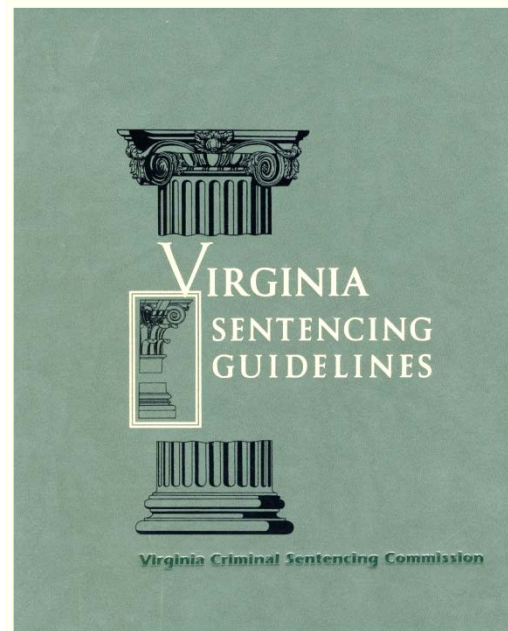




VIRGINIA CRIMINAL SENTENCING COMMISSION

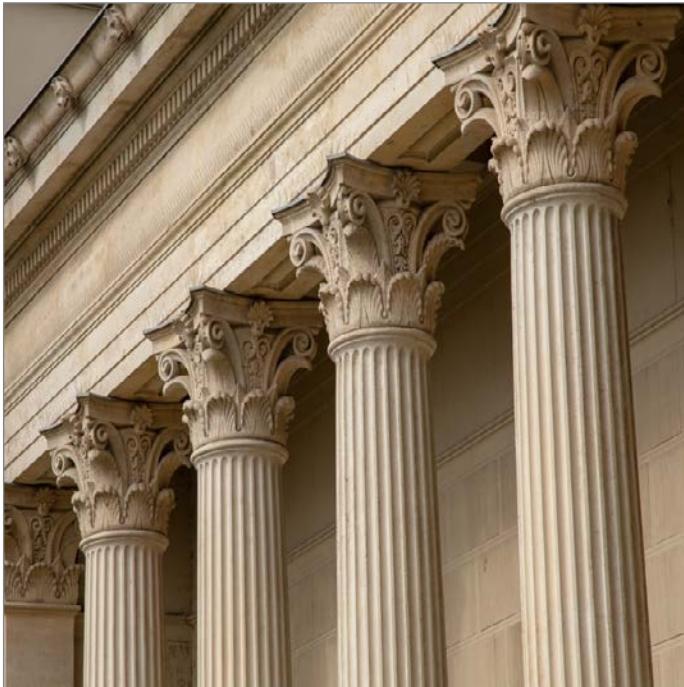


Proposed Analysis for Possible Guidelines Revisions

June 10, 2024

Virginia's Sentencing Guidelines

THE COMMISSION MUST DEVELOP GUIDELINES THAT TAKE INTO ACCOUNT **HISTORICAL SENTENCING PRACTICES** (§ 17.1-803).



In essence, Guidelines are designed to provide a benchmark for the typical, or average, case outcome based on the offenses at conviction, circumstances of the offense and prior record.

Exception: Midpoint enhancements for defendants with violent offense convictions required by § 17.1-805

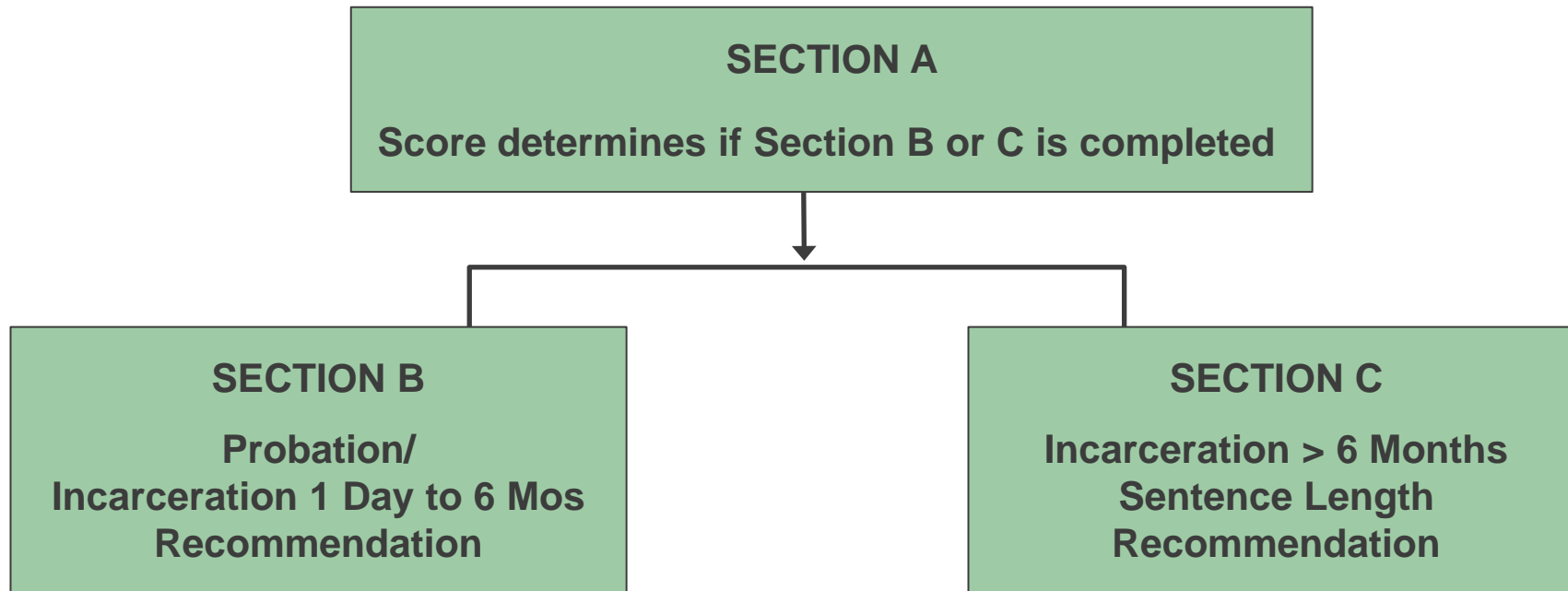
Change the Schedule: Analysis in the Summer, Report Results in September, Review Annual Report in November

Structure of Virginia's Sentencing Guidelines



Previous analysis of sentencing practices in Virginia found that judges often consider different factors, or weigh the factors differently, depending on the offense and type of decision being made.

Virginia's Sentencing Guidelines were structured to reflect the judicial decision-making process.



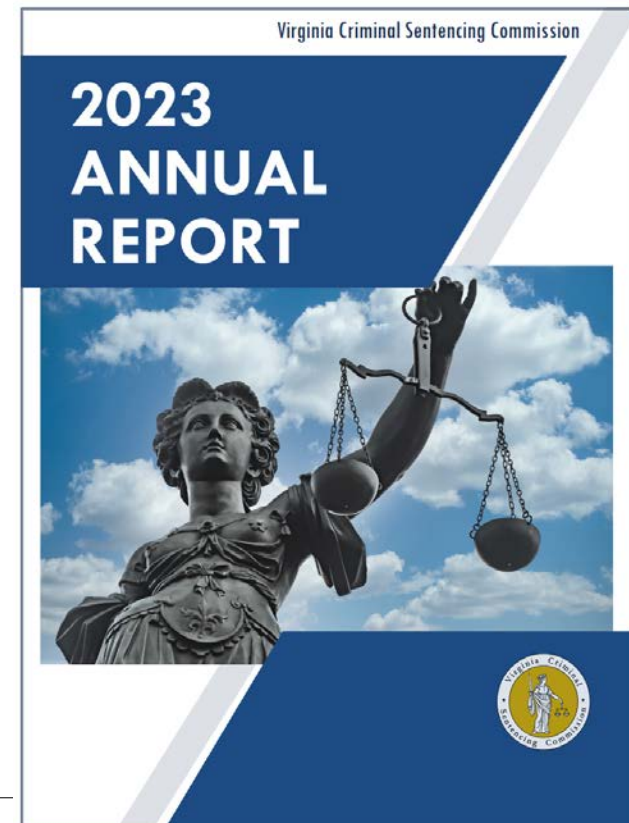
Modifications to the Sentencing Guidelines

THE COMMISSION **CLOSELY MONITORS** THE SENTENCING GUIDELINES SYSTEM AND, EACH YEAR, DELIBERATES UPON **POSSIBLE MODIFICATIONS** TO THE GUIDELINES.

Pursuant to § 17.1-806, any modifications adopted by the Commission must be presented in an annual report, due to the General Assembly each December 1.

Legislative session provides opportunity for lawmakers to review Commission recommendations.

Unless otherwise provided by law, the Commission's recommendations shall, become effective the following July 1.



Proposals for Sentencing Guidelines Revisions

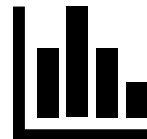
STAFF RECOMMENDS REVISIONS TO THE GUIDELINES BASED ON ANALYSIS OF *SENTENCING DATA* AND REVIEW OF *JUDGES' DEPARTURE REASONS*.

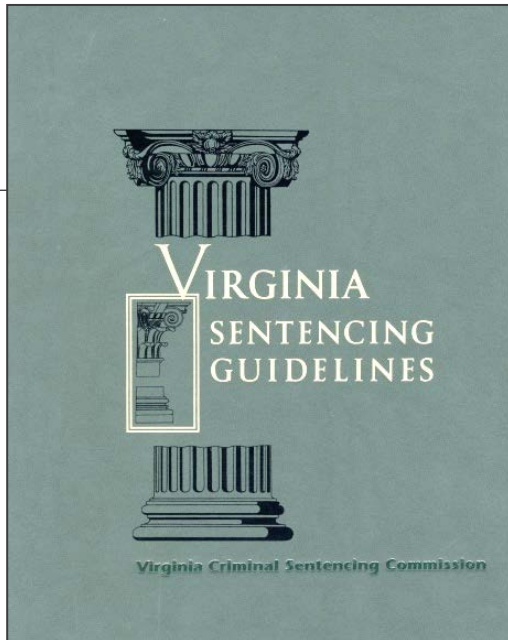


Proposals reflect the best fit for the historical data.

Proposals are designed to closely match the historical rate of incarceration in prison and jail.

Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be different and new factors may be added.





Proposed Topic 1:

Develop New Robbery Guidelines

Based on the Availability of Data and if Supported by Research

Changes in Robbery Penalties 2021 General Assembly

House Bill 1936 Elements of Robbery (§ 18.2-58)	Penalty (Effective July 1, 2021)
Results in serious bodily injury or death	Class 2 felony (20 years - Life)
Use or display of firearm in threatening manner	Class 3 felony (5 - 20 years)
Use of physical force not resulting in serious bodily injury or Use of a deadly weapon other than firearm in a threatening manner	Class 5 felony (1 - 10 years)
Use of threat/intimidation not involving a deadly weapon	Class 6 felony (1 - 5 years)

At the time the legislation became effective, data were insufficient to perform the analysis necessary to develop Guidelines based on the proposed classes.

The existing Guidelines likely did not accurately reflect the typical or average robbery outcomes based on the new classifications.

For these reasons, the [Commission suspended the Robbery Guidelines](#) until a full analysis of sentencing under the new penalty structure could be completed.

Prior to 2021, Robbery Guidelines Were Delineated by Location, Street, Business, Residence, Bank, & Whether or Not a Firearm/Simulated Firearm Was Used

Robbery

§ 18.2-58

Sentencing Events with Robbery as the Primary or an Additional Offense FY2022-FY2023

Robbery Offense Dates on or after 7/1/2021

	Number of Sentencing Events
Robbery is Primary Offense	252
Robbery is Additional Offense and has the same statutory maximum as the Primary Offense	43
TOTAL	295

There are other sentencing events with Robbery as an additional offense and, in these events, Robbery will remain an additional offense because it has the lower statutory maximum penalty than the primary offense (n=43 events).

Note: Table excludes Alexandria cases as that clerk does not participate in the statewide Case Management System (CMS) and the clerk has not provided data to VCSC. One event is excluded because the Robbery identified as the Primary Offense was committed prior to 7/1/2021; in that case, an Additional Offense of Robbery was committed on or after 7/1/2021.

Robbery

§ 18.2-58

**Sentencing Events with
Robbery as the Primary Offense
FY2022-FY2023**

**Robbery Offense Dates on or
after 7/1/2021**

	Number of Sentencing Events	
Robbery resulting in death	1] Class 2 felony
Robbery resulting in serious bodily injury	10	
Robbery with firearm	91	→ Class 3 felony
Robbery by force (no serious injury)	43] Class 5 felony
Robbery with other deadly weapon	30	
Robbery by threat (no deadly weapon)	38	→ Class 6 felony
Carjacking	22] Unclassed felony Life max
Carjacking with gun or simulated gun	8	
Not clear (further research required)	9	
TOTAL	252	

Robbery

§ 18.2-58

Sentencing Events with
Robbery as the Primary Offense
FY2022-FY2023

Robbery Offense Dates on or
after 7/1/2021

	Probation/ No Incar	Incarceration 1 Day - 6 Mos	Incarceration > 6 Mos	Incarceration > 6 Mos Median Sentence
Robbery - death/serious injury (Class 2 felony) n=11	9.1%	0.0%	90.9%	5.0 Years
Robbery - firearm (Class 3 felony) n=91	13.2%	8.8%	78.0%	5.0 Years
Robbery - other weapon/ force w/no serious injury (Class 5 felony) n=73	16.4%	13.7%	69.9%	2.0 Years
Robbery - threat/ no deadly weapon (Class 6 felony) n=38	2.6%	10.5%	86.8%	2.0 Years
Carjacking (unclassified felony) n=30	13.3%	0.0%	86.7%	5.7 Years
OVERALL	11.9%	9.1%	79.0%	2.5 Years




These Patterns Look Different Than Robbery Sentencing Events in FY2019-FY2020.

Special Study Proposed

Information on the **CASE DETAILS WORKSHEET** will be important for the important for the analysis.

Staff proposes a special study to **collect data from primary court sources** to complete the Case Details Worksheet for each sentencing event.



 **Sentencing Guidelines**
Case Details Worksheet

SWIFTIDCM: _____

1. Defendant's Name: _____

2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____
 Physical Disability Intellectual Disability Autism Spectrum Disorder Unknown

3. Type of Counsel: Retained Court Appointed Public Defender Other Unknown

4. Pretrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

5. Pretrial Supervision by Pretrial Services Agency: No Yes Yes, ordered but did not complete/attend Unknown

6. Posttrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

7. Source of Bond: Personal Family Other Bonding Company N/A Unknown

8. Total Time Served Prior to Sentencing: Years _____ Months _____ Days _____ N/A

9. Number of Codefendants: _____

10. Legal Status at Offense (check all that apply):
 Escaped Inmate Mandatory Parole Discretionary Parole
 Geriatric Release - § 53.1-40.01 Post Release - §19.2-296.2 Probation Bond
 Recognizance Community Program Pre-Trial Supervision Good Behavior Unknown
 Juvenile Probation Juvenile Parole Summons Other _____ None

11. Weapon Use: None Possessed Used to Injure Used to Threaten (by voice, note, text, etc.) Unknown

12. Weapon Type: Firearm Knife Explosive Simulated/Falsigned Weapon Blunt Object
 Note/Verbal Vehicle Animal Other _____ N/A

13. Offender's Role Alone Leader Accomplice Police Officer/LEO Not Determined Unknown

14. Value of Property Taken/Damaged: Highest value for one item \$ _____, Total value of all items \$ _____ N/A

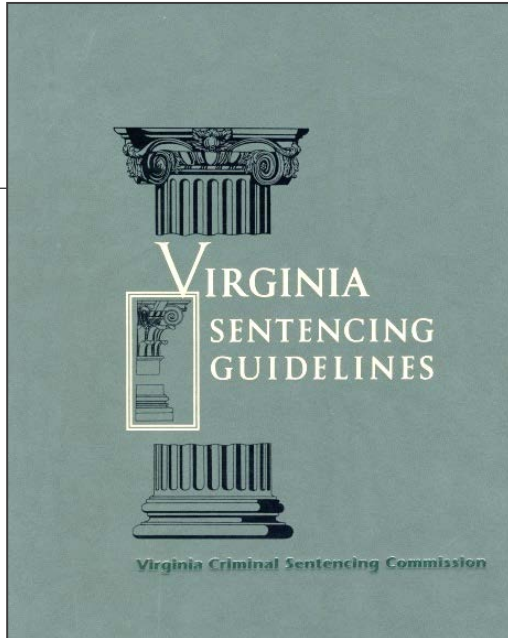
15. Location: Bank Business Residence Street/Outside Automobile Other _____ N/A

Where circuit court clerks participate in **OCRA**, staff will utilize the system to access non-confidential scanned case documents.

Where clerks do not participate in OCRA, staff may **visit clerks' offices** to gather needed data.

Staff will also request **criminal history data** from the Virginia State Police.

Report the Results in September



Proposed Topic 2:

Develop Guidelines for Non-Covered Offenses

95%
Of All Felony Convictions
Are Covered by
Sentencing Guidelines

1

Repeat

Prisoner Possess, Sell, Secrete, Etc. Unlawful Chemical § 53.1-203(5)

§ 53.1-203. Felonies by prisoners; penalties.

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

5. Procure, sell, secrete or have in his possession any chemical compound which he has not lawfully received.

This is a Class 6 felony (1 year to 5 years) and a Category II offense (§ 17.1-805).



Prisoner Possess, Sell, Secrete, Etc. Unlawful Chemical § 53.1-203(5)

FY2019 – FY2023
Number of Sentencing Events = 253

Disposition	Percent	Median Sentence
Probation/No Incarceration	29.6%	N/A
Incarceration up to 6 months	46.6%	3.8 Months
Incarceration of more than 6 Months	23.7%	1.0 Year

Data reflect events in which this offense was the primary (or most serious) offense at sentencing.

Resist Arrest/Obstruct Justice by Threats or Force § 18.2-460(C)



§ 18.2-460(C). Obstructing justice; resisting arrest; fleeing from a law-enforcement officer; penalties.

If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision (a)(3), (b) or (c) of § 18.2-248.1, or § 18.2-46.2 or § 18.2-46.3, or relating to the violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he is guilty of a Class 5 felony.

This is a Category II offense (§ 17.1-805).

Resist Arrest/Obstruct Justice by Threats or Force § 18.2-460(C)

FY2019 – FY2023
Number of Sentencing Events = 137

Disposition	Percent	Median Sentence
Probation/No Incarceration	31.4%	N/A
Incarceration up to 6 months	44.5%	3.0 Months
Incarceration of more than 6 Months	24.1%	1.0 Year

Data reflect events in which this offense was the primary (or most serious) offense at sentencing.

§ 18.2-308.4. Possession of firearms while in possession of certain substances.

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

Possess Schedule I/II drug & firearm on or about the person (2Y Mandatory)
Sell, etc., Schedule I/II drug while possessing firearm (5Y Mandatory)
Sell, etc., more than 1 lb. MJ while possessing firearm (5Y Mandatory)
Possession of Schedule I or II drug is a Class 5 felony (1Y-10Y)



Possess Schedule I/II Drug while Possessing Firearm (Not on or about Person) § 18.2-308.4(A)

FY2019 – FY2023
Number of Sentencing Events = 118

Disposition	Percent	Median Sentence
Probation/No Incarceration	61.9%	N/A
Incarceration up to 6 months	26.3%	3.0 Months
Incarceration of more than 6 Months	11.9%	1.0 Year

Data reflect events in which this offense was the primary (or most serious) offense at sentencing.

Shoot or Throw Missile at Train, Car, Etc. § 18.2-154



§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.

Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or cars on any railroad or other transportation company or any vessel or other watercraft, or any motor vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril, is guilty of a Class 4 felony....

If any such act is committed unlawfully, but not maliciously, the person so offending is guilty of a Class 6 felony...

**Guidelines
Offense**

**Non-
Guidelines
Offense**

The Class 4 felony is Category II offense (§ 17.1-805).

Shoot or Throw Missile at Train, Car, Etc. § 18.2-154

Maliciously shoot or throw missile at train, car, etc. Class 4 felony

FY2019 – FY2023
Number of Sentencing Events = 143

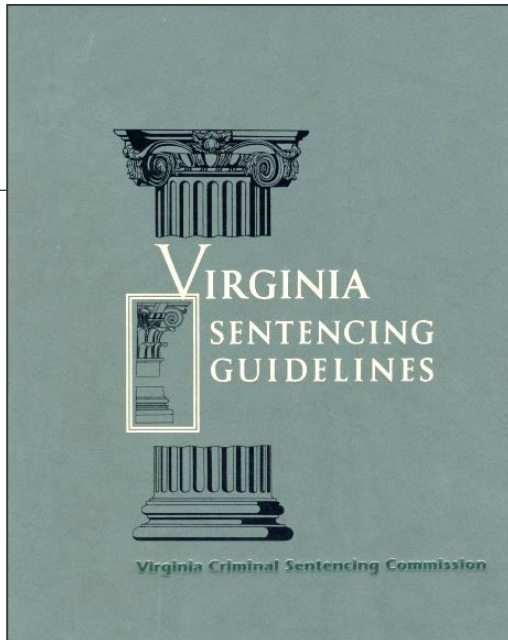
Disposition	Percent	Median Sentence
Probation/No Incarceration	17.5%	N/A
Incarceration up to 6 months	24.5%	3.0 Months
Incarceration of more than 6 Months	58.0%	1.5 Years
<hr/>		
Concurrence	65.7%	
Below Guidelines	4.9%	
Above Guidelines	29.4%	

Unlawfully shoot or throw missile at train, car, etc. Class 6 felony

FY2019 – FY2023
Number of Sentencing Events = 52

Disposition	Percent	Median Sentence
Probation/No Incarceration	48.1%	N/A
Incarceration up to 6 months	30.8%	3.0 Months
Incarceration of more than 6 Months	21.2%	1.1 Years

Data reflect events in which this offense was the primary
(or most serious) offense at sentencing.

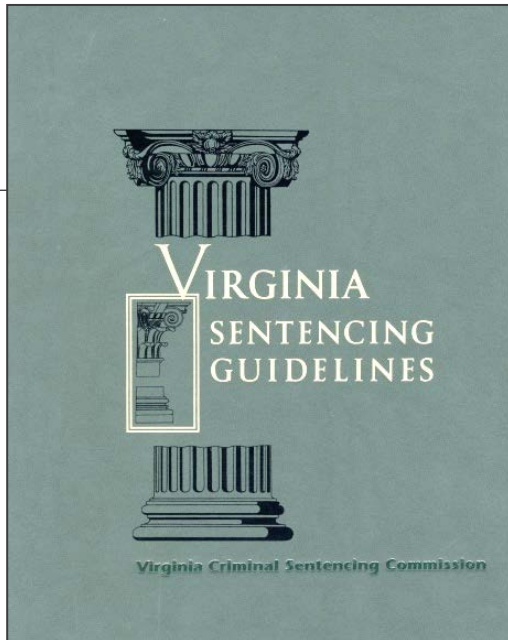


Any Other Offenses?

Proposed Topic 2:

Develop Guidelines for Non-Covered Offenses

- **Prisoner Possess, Sell, Secrete, Etc., Unlawful Chemical (§ 53.1-203(5))**
- **Resist Arrest/Obstruct Justice by Threats or Force (§ 18.2-460(C))**
- **Possess Schedule I/II Drug while Possessing Firearm - Not on or about Person (§ 18.2-308.4(A))**
- **Unlawfully Shoot or Throw Missile at Train, Car, Etc. (§ 18.2-454)**
 - with possible adjustment for malicious offense



Proposed Topic 3:

Develop Formal Standards for Substantial Assistance, Acceptance of Responsibility and Expression of Remorse



GUIDELINES ADJUSTMENT

Substantial Assistance, Acceptance of Responsibility or Expression of Remorse

If a judge determines at sentencing that the defendant:

**PROVIDED SUBSTANTIAL ASSISTANCE,
ACCEPTED RESPONSIBILITY OR
EXPRESSED REMORSE**

the low end of the Guidelines recommended range will be adjusted.

Calculated low end of Guidelines range is:	Adjusted low end of Guidelines range is:
3 years or less	Zero
More than 3 years	Reduced by 50%

Midpoint recommendation and low end of the range remain unchanged.

◆ Final Disposition Fill In After Sentence Has Been Pronounced

Modification of Recommendation Based on Substantial Assistance, Acceptance of Responsibility or Expression of Remorse
The decision to modify the guidelines recommendation must be made by the judge. If the recommended low end is 3 years or less, the low end is adjusted to no incarceration. If recommended low end is more than 3 years, the low end is reduced by 50%.

If accepted by the court the
Adjusted Range is: _____ TO _____

◆ SENTENCE

Total Time Imposed Before Suspension Life Sentence + Years Months Days Sentenced to Time Served

Total Effective Time to Serve Life Sentence + Years Months Days

Incarceration Sentence to Run Concurrently With Another Event

◆ Final Disposition Fill In After Sentence Has Been Pronounced

Modification of Recommendation Based on Substantial Assistance, Acceptance of Responsibility or Expression of Remorse
The decision to modify the guidelines recommendation must be made by the judge. If the recommended low end is 3 years or less, the low end is adjusted to no incarceration. If recommended low end is more than 3 years, the low end is reduced by 50%.

If accepted by the court the
Adjusted Range is: 0 Years 0 Months 0 Days TO 2 Years 6 Months 0 Days

◆ SENTENCE

Total Time Imposed Before Suspension Life Sentence + Years Months Days Sentenced to Time Served

Total Effective Time to Serve Life Sentence + Years Months Days

Incarceration Sentence to Run Concurrently With Another Event

Restitution \$ _____ Fine \$ _____

◆ REASON FOR DEPARTURE AND/OR MODIFICATION OF JURY SENTENCE
Must be completed pursuant to § 19.2-298.01(E) and/or § 19.2-295(B)/ § 19.2-303

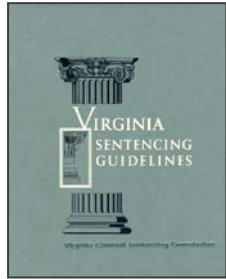
Accepted Nonviolent Risk Assessment recommendation, no departure reason needed. Office Use Only

◆ SENTENCING DATE
 / / _____
Month Day Year Judge's Signature

◆ ATTACH COURT ORDER AND MAIL Pursuant to § 19.2-298.01(E) _____
After sentencing, send to: Virginia Criminal Sentencing Commission • 100 North Ninth Street • Fifth Floor • Richmond, Virginia 23219
Office Use Only

GUIDELINES ADJUSTMENT

Substantial Assistance, Acceptance of Responsibility or Expression of Remorse



2023 Sentencing Guidelines Manual

Modification of Recommendation for Substantial Assistance, Accepts Responsibility or Expresses Remorse

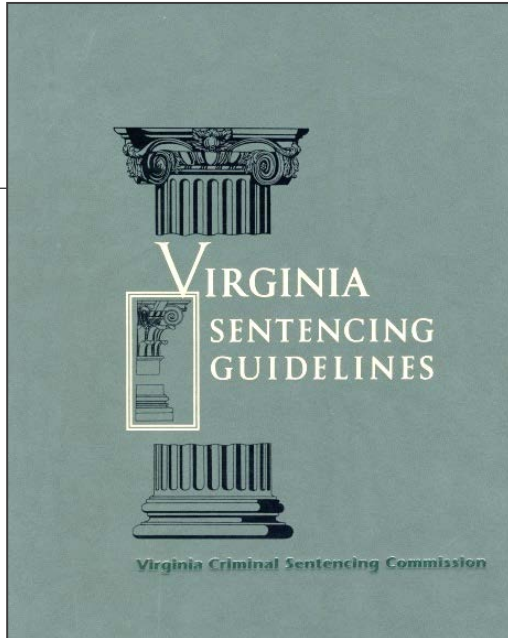
This factor is determined solely by the judge. Attorneys may make an argument that the defendant provided substantial as-

4. Maintained, obtained employment or job skills before sentencing.
5. Completed school or a training program before sentencing.
6. Admitted guilt shortly after the offense, during the arrest, etc., and prior to an appearance in court.

Often the offender is sentenced below the guidelines when the defendant demonstrated a change in attitude or behavior prior to sentencing. Below are specific reasons used in the past to justify a sentence below the historically based sentence recommendation:

2. Began rehabilitation process without court intervention; took initiative to make a change (e.g., completed substance abuse treatment, sex offender treatment).
3. Demonstrated responsibility for the support and care of family members (e.g., providing financial support, etc.).

Does the Commission wish to develop formal standards or criteria for the Modification of Recommendation factor?



Proposed Topic 4:

Request legislation to modify § 19.2-390.01 to specify that the Sentencing Commission generates and maintains the Virginia Crime Codes (VCCs)

Virginia Crime Codes (VCCs)



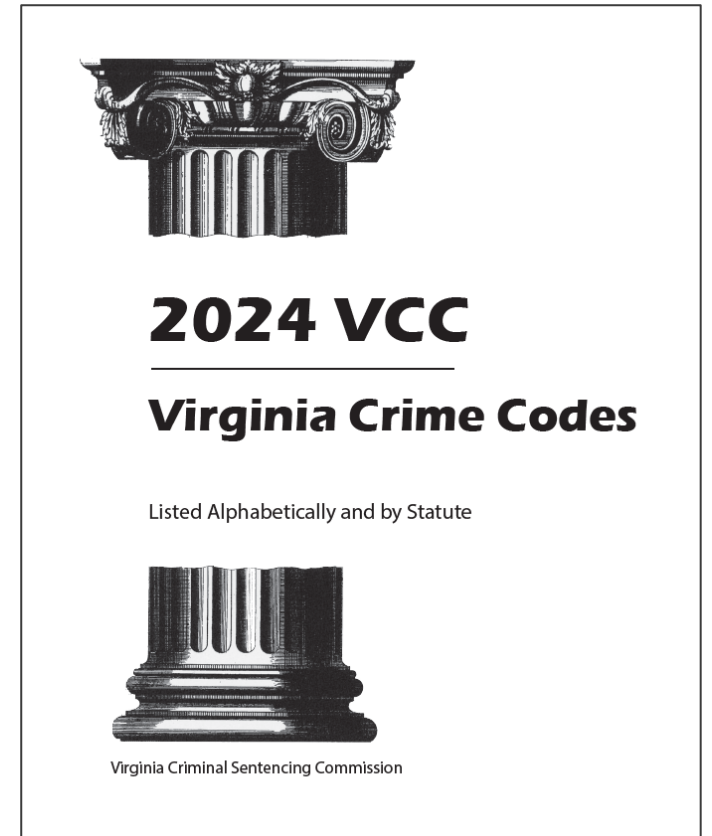
Since 2003, criminal justice agencies and courts have been required to use Virginia Crime Codes (VCCs) to identify offenses in their respective information systems (§ 19.2-390.01).

VCCs have been developed and assigned to each unique criminal offense defined in the *Code of Virginia*.

Example: NAR-3022-F5

Possession of Schedule I or II drug

Since 1995, the Sentencing Commission has administered the VCC system, including the creation or modification of VCCs.



Virginia Crime Codes (VCCs)

Although the Commission has maintained the VCC system since 1995, the statute does not explicitly assign the function to any agency.

Purpose:
To Maintain the Integrity of VCCs for Administration & Research Purposes

Possible new language:

The Virginia Criminal Sentencing Commission shall develop, maintain and modify the Virginia crime codes as may be deemed necessary.



§ 19.2-390.01. Use of Virginia crime code references required.

If any criminal warrant, indictment, information, presentment, petition, summons, charging document issued by a magistrate, or dispositional document from a criminal trial, involves a jailable offense, it shall include the Virginia crime code references for the particular offense or offenses covered. When Virginia crime codes are provided on charging and dispositional documents, the Virginia crime codes shall be recorded and stored for adult offenders in: criminal history computer systems maintained by the State Police; court case management computer systems maintained by the Supreme Court of Virginia; probation and parole case management computer systems maintained by the Department of Corrections and the Virginia Parole Board; pretrial and community-based probation case management computer systems maintained by the Department of Criminal Justice Services; and jail management computer systems maintained by the State Compensation Board. The Department of Juvenile Justice shall record and store Virginia crime codes for particular offenses related to juveniles in case management computer systems.

Virginia crime codes shall only be used to facilitate administration and research and shall not have any legal standing as they relate to a particular offense or offenses.



VIRGINIA
SENTENCING
GUIDELINES



Virginia Criminal Sentencing Commission